

## Department of Justice

## § 25.1

(b) Ordinarily, the determination of an award will be made on the basis of the written record of the underlying proceeding and the filings required or permitted by the foregoing sections of these rules. However, the adjudicative officer may *sua sponte* or on motion of any party to the proceedings require or permit further filings or other action, such as an informal conference, oral argument, additional written submissions, or an evidentiary hearing. Such further action shall occur only when necessary for full and fair resolution of the issues arising from the application and shall take place as promptly as possible. A motion for further filings or other action shall specifically identify the information sought on the disputed issues and shall explain why the further filings or other action is necessary to resolve the issues.

(c) In the event that an evidentiary hearing is required or permitted by the adjudicative officer, such hearing and any related filings or other action required or permitted shall be conducted pursuant to the procedural rules governing adversary adjudications conducted by the Department component in which the underlying adversary adjudication was conducted.

### § 24.306 Decision on application.

The adjudicative officer shall promptly issue a decision on the application which shall include proposed written findings and conclusions on such of the following as are relevant to the decision:

(a) The applicant's status as a prevailing party;

(b) The applicant's qualification as a "party" under 5 U.S.C. 504(b)(1)(B);

(c) Whether the Department's position as a party to the proceeding was substantially justified;

(d) Whether special circumstances make an award unjust;

(e) Whether the applicant during the course of the proceedings engaged in conduct that unduly and unreasonably protracted the final resolution of the matter in controversy; and

(f) The amounts, if any, awarded for fees and other expenses, with reasons for any difference between the amount requested and the amount awarded.

### § 24.307 Department review.

The decision of the adjudicative officer will be reviewed to the extent permitted by law by the Department in accordance with the Department's procedures for the type of proceeding involved. The Department will issue the final decision on the application.

### § 24.308 Judicial review.

Judicial review of final Department decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

### § 24.309 Payment of award.

An applicant seeking payment of an award shall submit a copy of the final decision granting the award to the Department's Accounting Office for processing. A statement that review of the underlying decision is not being sought in the United States courts, or that the process for seeking review of the award has been completed, must also be included.

## PART 25—DEPARTMENT OF JUSTICE INFORMATION SYSTEMS

### Subpart A—The National Instant Criminal Background Check System

#### Sec.

25.1 Purpose and authority.

25.2 Definitions.

25.3 System information.

25.4 Record source categories.

25.5 Validation and data integrity of records in the system.

25.6 Accessing records in the system.

25.7 Querying records in the system.

25.8 System safeguards.

25.9 Retention and destruction of records in the system.

25.10 Correction of erroneous system information.

25.11 Prohibited activities and penalties.

AUTHORITY: Pub. L. 103-159, 107 Stat. 1536.

SOURCE: Order No. 2186-98, 63 FR 58307, Oct. 30, 1998, unless otherwise noted.

### Subpart A—The National Instant Criminal Background Check System

#### § 25.1 Purpose and authority.

The purpose of this subpart is to establish policies and procedures implementing the Brady Handgun Violence

Prevention Act (Brady Act), Public Law 103-159, 107 Stat. 1536. The Brady Act requires the Attorney General to establish a National Instant Criminal Background Check System (NICS) to be contacted by any licensed importer, licensed manufacturer, or licensed dealer of firearms for information as to whether the transfer of a firearm to any person who is not licensed under 18 U.S.C. 923 would be in violation of Federal or state law. The regulations in this subpart are issued pursuant to section 103(h) of the Brady Act, 107 Stat. 1542 (18 U.S.C. 922 note), and include requirements to ensure the privacy and security of the NICS and appeals procedures for persons who have been denied the right to obtain a firearm as a result of a NICS background check performed by the Federal Bureau of Investigation (FBI) or a state or local law enforcement agency.

#### § 25.2 Definitions.

*Appeal* means a formal procedure to challenge the denial of a firearm transfer.

*ARI* means a unique Agency Record Identifier assigned by the agency submitting records for inclusion in the NICS Index.

*ATF* means the Bureau of Alcohol, Tobacco, and Firearms of the Department of Treasury.

*Audit log* means a chronological record of system (computer) activities that enables the reconstruction and examination of the sequence of events and/or changes in an event.

*Business day* means a 24-hour day (beginning at 12:01 a.m.) on which state offices are open in the state in which the proposed firearm transaction is to take place.

*Control Terminal Agency* means a state or territorial criminal justice agency recognized by the FBI as the agency responsible for providing state- or territory-wide service to criminal justice users of NCIC data.

*Data source* means an agency that provided specific information to the NICS.

*Delayed* means that more research is required prior to a NICS “Proceed” or “Denied” response. A “Delayed” response to the FFL indicates that it would be unlawful to transfer the fire-

arm until receipt of a follow-up “Proceed” response from the NICS or the expiration of three business days, whichever occurs first.

*Denied* means denial of a firearm transfer based on a NICS response indicating one or more matching records were found providing information demonstrating that receipt of a firearm by a prospective transferee would violate 18 U.S.C. 922 or state law.

*Denying agency* means a POC or the NICS Operations Center, whichever determines that information in the NICS indicates that the transfer of a firearm to a person would violate Federal or state law, based on a background check.

*Dial-up access* means any routine access through commercial switched circuits on a continuous or temporary basis.

*Federal agency* means any authority of the United States that is an “Agency” under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10).

*FFL (federal firearms licensee)* means a person licensed by the ATF as a manufacturer, dealer, or importer of firearms.

*Firearm* has the same meaning as in 18 U.S.C. 921(a)(3).

*Licensed dealer* means any person defined in 27 CFR 178.11.

*Licensed importer* has the same meaning as in 27 CFR 178.11.

*Licensed manufacturer* has the same meaning as in 27 CFR 178.11.

*NCIC (National Crime Information Center)* means the nationwide computerized information system of criminal justice data established by the FBI as a service to local, state, and Federal criminal justice agencies.

*NICS* means the National Instant Criminal Background Check System, which an FFL must, with limited exceptions, contact for information on whether receipt of a firearm by a person who is not licensed under 18 U.S.C. 923 would violate Federal or state law.

*NICS Index* means the database, to be managed by the FBI, containing information provided by Federal and state agencies about persons prohibited under Federal law from receiving or possessing a firearm. The NICS Index is